Office-Supreme Court, U.S.
FILED
MAY 24 1985
ALEXANDER L. STEVAS
CLERK

No. 84-1499

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GREENBERRY JOHNSON,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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QUESTION PRESENTED FOR REVIEW

Whether the motion to suppress evidence was properly denied where police reasonably searched the van for evidence connected with the shooting of Petitioner and inadvertently discovered contraband?

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STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as set forth at pages 2-3 with the following additions:

Officer Riley, who responded to the scene of

the shooting, testified that he saw Petitioner sitting in the driver's seat of the van with a gunshot wound to the stomach. When Riley asked Petitioner what happened, Petitioner said he had been assaulted and robbed by three black males but could not describe them in any greater detail. After Petitioner was transported to the hospital, Riley summoned the police crime lab unit. Riley stated that because of the serious nature of the crime, it was necessary to transport the van to police headquarters to see if any evidence could be found as to the identity of Petitioner's attackers.

Riley and fellow officer Barton searched the van at the police station. Riley discovered a blue bag on the front seat with $2000. in $20. - bills. Barton found yet a second bag between the passenger's seat and door filled with white capsules and white substance.

REASONS FOR DENYING THE WRIT

THE MOTION TO SUPPRESS EVIDENCE WAS PROPERLY DENIED WHERE POLICE REASONABLY SEARCHED THE VAN AND INADVERTENTLY DISCOVERED CONTRABAND.

Petitioner contends that the motion to suppress evidence was improperly denied for a variety of reasons. His argument wanders between allegations relevant to inventory searches, to those dealing with automobile searches based on probable cause, and finally to the general reasonsableness of searching containers found in vehicles. In contrast, the Court of Special Appeals carefully analyzed this search under three theories, finally concluding tht "the search of a victim's van, following a violent and life-threatning attack, was reasonable" when it "was conducted with the express purpose of locating clues to identify the victim's attackers." Pet. at 8a. That decision is eminently correct and merits no further review by this Court.

Officer Scott Riley testified that on the night

in question, he saw Petitioner sitting in the driver's seat of his van, suffering from a gunshot wound to the stomach. When asked by Riley as to what had happened, Petitioner stated that he was assaulted and robbed by three black males but could not describe them. An ambulance was summoned and Petitioner was taken to the hospital. Riley called for a tow truck and the police crime lab unit. Because of the serious nature of the crime, it was necessary to transport the van to police headquarters to see if any evidence or clues could be found that would enable police to determine the identity of the perpetrators of the assault and robbery on Petitioner. Riley added that because the lighting conditions on the street were poor and those in the police headquarters were not, the search, as a practical matter, would have been done more efficiently at police headquarters.

Once the van was in police headquarters, Riley, along with a crime lab technician and fellow officer Barton, conducted a search of the van for the purpose

of uncovering evidence as to who shot Petitioner. In so doing, Riley discovered a little blue bag on the top of the front seat. He untied it and discovered $2,000. in twenty dollar bills. Barton then opened the left door of the van and saw a brown pouch between the passenger's seat and the door. The pouch was found opened when he entered and Barton saw a glassine bag with white capsules and white substance which he suspected as being narcotics contained therein.

It was obvious that criminal activity was afoot and that the police had probable cause to search the van. They were not looking for narcotics, but for evidence regarding the shooting and robbery of Petitioner. They knew a robbery had occurred; the assailants were armed, and ascertaining their identify was imperative. Because Petitioner could not provide a description of the assailants, the search for clues regarding their identity or motive was critical. The pouches that the police discovered and searched may have well provided information leading to the identity

of Petitioner's attackers. Indeed, they could have belonged to one of the perpetrators. Further, the exigency of the situation dictated that police take immediate action to find any information that might have led them to the robbers.

Ordinarily a motor vehicle and it contents may be searched without a warrant where police have probable cause to believe the vehicle contains evidence of a crime. United States v. Ross, 456 U.S. 798 (1982). In defining "probable cause," this Court stated in Illinois v. Gates, 462 U.S. 213 (1983), that "it is clear that 'only the probability, and not a prima facie showing of criminal activity is the standard of probable cause'." (quoting Spinelli v. United States, 393 U.S. 410, 419 (1969) (citations omitted).[1] This Court added that "probable cause is a fluid concept -

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[1] In Gates, this Court considered the application of the Fourth Amendment to a Magistrate's issuance of a search warrant on the basis of a partially corroborated anonymous informant's tip. While this is a distinction from the present case, the Court's discussion of "probable cause" is relevant and appropriate.

turning on the assessment of probabilities in particular factual contexts - not readily or even usefully, reduced to a neat set of legal rules." Gates, 462 U.S. at 233. In Chambers v. Maroney, 399 U.S. 42 (1970), this Court held that where a police officer had probable cause to conduct a warrantless search of a vehicle under Carroll v. United States, 267 U.S. 132 (1925), he may remove the vehicle to the police station before making the search. That doctrine was applied to packages found in a car in United States v. Johns, 469 U.S. __, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985).

Under that rationale, if there was probable cause to believe that the van contained evidence of crime, it was entirely reasonable for the police to search it and the containers at the scene or at headquarters. The Maryland Court of Special Appeals questioned, however, the applicability of the Carroll doctrine when the probable cause does not relate to the driver or an occupant of the vehicle, and it went onto examine the general reasonableness of the search.

The Maryland court relied on the articulation of reasonableness in Bell v. Wolfish, 441 U.S. 520, 559 (1979), and distinguished Mincey v. Arizona, 437 U.S. 385 (1978), because there the four day search was of an apartment. That analysis is sound and, unlike Thompson v. Louisiana, 469 U.S. __, 105 S.Ct. 409, 83 L.Ed.2d 246 (1984), does not improperly validate any "murder scene exception." Here, the place searched was a van parked on a public highway, not someone's home. The diminshed expectation of privacy in a vehicle, recently reaffirmed in California v. Carney, __ U.S. __, No. 83-859, 53 U.S.L.W. 4521, filed May 13, 1985, coupled with the obvious immediate police need to search for clues to the identity of the robbers, justified the prompt transfer of the van to headquarters where a proper search could be made.

The discovery and seizure of contraband and evidence of drug transactions in plain view during the reasonable emergency search was also proper, Mincey, 437 U.S. at 393. Even where police are legitimately

searching for evidence directed at someone other than the defendant, any evidence found may be seized. Frazier v. Cupp, 394 U.S. 731 (1969) (in lawfully searching duffle bag belonging to petitioner's cousin, police's finding and seizing evidence against petitioner clearly permitted); Ker v. California, 374 U.S. 23 (1963) (observation and subsequent seizure of marijuana in defendant's kitchen by police was valid where probable cause existed to arrest).

Furthermore, even though the Maryland court found in Petitioner's favor on the inventory rationale, the complaints he makes here are insubstantial. While the van was parked legally, Petitioner was known in the neighborhood and friends or relatives may have attempted to remove the van or its contents had police not done so. Petitioner was in no condition to drive the van away himself. The removal and search of the van was done in good faith and not as a mere subterfuge. The police took custody of Petitioner's van because it might well have been a public hazard

had it been left on the street. A crowd had gathered and the van had just been the scene of a shooting. Police were following standard procedure when such a serious crime occurs and a car is involved. The reasonableness of the impoundment and inventory "does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." Illinois v. Lafayette, 462 U.S. 640, 647 (1983). Here, the routine procedure of examining a car which is the scene of a serious crime was proper.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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